

**IN THE CIRCUIT COURT OF SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS**

PAMELA DIANE STARK,

Plaintiff,

vs.

**Docket No.: CT-002958-18
Division VIII**

JOE EDWARD STARK,

Defendant.

MOTION TO QUASH SUBPOENA

City of Memphis, by and through counsel, moves this Honorable Court to Quash a Subpoena pursuant to the Tennessee Rules of Civil Procedure 45.07 (2) that certain matters, in this case, an open ongoing domestic violence investigation and any investigative material, not be inquired into.

BACKGROUND

On January 7, 2019, Plaintiff, Pamela Stark served a subpoena *duces tecum* upon Lieutenant Anthony Mullins of the Memphis Police Department (“the Department”). (Attached as Exhibit 1.). The subpoena requested he appear to take a deposition and to produce the following:

1. Bring with you all communication, digital or otherwise, between you and Joe Stark regarding events of June 17, 2018.

The information sought by the Plaintiff pertains to an ongoing domestic violence investigation which is currently under review by a special prosecutor appointed by the Shelby County Attorney General. The Tennessee Rules of Criminal Procedure 16(a)(2) precludes the release of this investigative file and is not subject to release due to its ongoing investigative status.

LAW AND ARGUMENT

Citizen access to government records is governed by Tenn. Code Ann. § 10-7-503 *et. seq.* under the Tennessee Public Records Act (“TPRA”). Tenn. Code Ann. 10-7-503(2)(A) provides:

All state, county and municipal records shall, at all times during business hours, which for public hospitals shall be during the business hours of their administrative offices, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, *unless otherwise provided by state law.* (Emphasis Added)

There is a presumption of openness for government records. *Tennessean v. Metro. Gov't of Nashville*, 485 S.W.3d 857, 864 (Tenn. 2016), (quoting *Memphis Pub. Co. v. City of Memphis*, 871 S.W.2d 681, 684 (Tenn. 1994.)). The Public Records Act, however, is not absolute, as there are numerous statutory exceptions to disclosure.¹ *Tennessean v. Metro. Gov't of Nashville*, at 865. The TPRA’s scope is broad, however, the General Assembly recognized there would be times that public records did not need to be disclosed, and, thus, made exceptions in state law and in the statute itself. *Swift v. Campbell*, 159 S.W.3d 565, 570-71 (Tenn. Ct. App. 2004). One state law exception to the public records statute is in regard to

¹ Tenn.Code Ann. §§ 10-7-503(a)(2)(A), -503(d)-(e), -504.

open criminal investigations, found in the Tennessee Rules of Criminal Procedure. Tenn. R. Crim. P. 16(a)(2) in the matter of discovery states in pertinent part:

Information Not Subject to Disclosure. Except as provided in paragraphs (A), (B), (E), and (G) of subdivision (a)(1), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal state documents made by the district attorney general or other state agents or law enforcement officers in connection with investigating or prosecuting the case...

Tenn. R. Crim. P. 16(a)(2).

Tenn. R. Crim. P. 16 represents the work product doctrine in criminal cases. *Swift*, 159 S.W.3d at 572. The work product doctrine “has a vital role in assuring the proper functioning of the criminal justice system” and is embodied in Tennessee Rule of Criminal Procedure 16(a)(2). *Wilson v. State*, 367 S.W.3d 229, 235-36 (Tenn. 2012) (quoting *Swift v. Campbell*, 159 S.W.3d 565, 573 (Tenn. Ct. App. 2004)). The requested materials are all a part of an ongoing criminal investigation. None of the material sought by counsel is available for review pursuant to the above rule. Applying the rules of criminal procedure here is persuasive in illustrating the importance of keeping the doors of discovery closed surrounding open investigations. The release of any of this material at this stage could jeopardize the integrity of the investigation and any criminal prosecution that may arise from it.

In *Appman v. Worthington*, 746 S.W.2d 165 (Tenn. 1987), attorneys for two prison inmates indicted for killing a fellow inmate, subpoenaed records maintained by a state correctional facility from a prison official. The Tennessee Supreme Court held that the Tenn. R. Crim. P. 16 exception applied. The court in referencing the rule, stated that “[t]his exception to disclosure and inspection does not apply to investigative files in possession of state agents or law enforcement officers, where the files have been closed and are not relevant to any pending or contemplated criminal action, but does apply where the files are open and are

relevant to pending or contemplated criminal action.” *Id.* at 166. Here, as in *Appman*, the exception is applicable because the file matter that the Plaintiff seeks is open and relevant to contemplated criminal action, and, therefore, not available for disclosure.

In *Ballard*, the Tennessee Supreme Court addressed the issue of whether a protective order shields from disclosure under the Public Records Act discovery responses filed with the clerk of a court in a civil proceeding. *Ballard v. Herzke*, 924 S.W.2d 652, 662 (Tenn. 1996). The Tennessean and the Society of Professional Journalists intervened in a civil suit between residents and owners and operators of a life care center. *Id.* at 656. The intervenors requested that the trial court rescind a blanket protective order that sealed discovery documents filed in the case because the documents were public records. *Id.* Citing its Court's holding in *Appman* that the Tennessee Rules of Criminal Procedure are encompassed within the “state law” exception to the Public Records Act, the Court held the same reasoning applied to the Tennessee Rules of Civil Procedure. *Id.* at 662.² The Supreme Court held that the Public Records Act did not require disclosure of records sealed by a protective order entered under Tennessee Rule of Civil Procedure. *Id.*

Finally, in *Tennessean v. Metro. Gov't of Nashville*, the Supreme Court examined its prior decisions as to whether Rule 16 precludes the release of any information to a nonparty. 485 S.W.3d 857, 870 (Tenn. 2016) The Supreme Court noted it held in *Appman* and again in *Ballard*, the Rules of Criminal Procedure constitute state law exceptions to the Public

² See also *Tennessean v. Tenn. Dep't of Pers.*, No. M2005-02578-COA-R3-CV, 2007 WL 1241337, at *10 (Tenn.Ct.App. Apr. 27, 2007) (“The Rules of Civil Procedure are state law that may exempt documents from the disclosure requirements of the [Public Records] Act.”); *Arnold v. City of Chattanooga*, 19 S.W.3d 779, 786 (Tenn.Ct.App.1999) (holding that the work product doctrine contained in the Tennessee Rules of Civil Procedure constitutes an exception to the Public Records Act). *Tennessean v. Metro. Gov't of Nashville*, 485 S.W.3d 857, 869 (Tenn. 2016)

Records Act. 485 S.W.3d at 870. Rule 16, as state law, controls the release of these records and provides for access to these records only to the parties to the criminal case—the State and the defendant. *Id.* at 871. There is no provision in Rule 16 for release of discovery materials to the public. *Id.* Citing *Schneider*, the Supreme Court acknowledged the “harmful and irreversible consequences [that] could potentially result from disclosing files that are involved in a pending criminal investigation.” *Schneider v. City of Jackson*. 226 S.W.3d 332, 348 (Tenn. 2007).

It is within the trial court’s discretion to determine whether to put restrictions on discovery in a particular case. *Strickland v. Strickland*, 618 S.W.2d 496, 501 (Tenn. Ct. App. 1981). The hardship implicated here is one of great magnitude, the possible irreversible disclosure of facts and evidence that could endanger an open criminal investigation. Tennessee Rules of Civil Procedure 45.07 (2) provides for the following:

(2) A non-party witness commanded to give deposition testimony or to produce documents or tangible things or to permit inspection shall serve on the party or attorney designated in the subpoena a written objection, if any, to having to give testimony or to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises, or to producing electronically stored information in the form or forms requested. Such objection must be served on the party or attorney designated in the subpoena within twenty-one days after the subpoena is served.

The City of Memphis moves the Court to quash this subpoena and preclude the Plaintiff from deposing any witness or investigator and from reviewing any material contained within the Memphis Police Department’s open investigative file. This includes all statements and investigative materials.

CONCLUSION

For the foregoing reasons, the City of Memphis respectfully moves this Honorable Court to quash the subpoena issued to Anthony Mullins and to deny the Plaintiff access to the Memphis Police Department's open investigative file which is in the possession of the Special Prosecutor.

Respectfully submitted,

Bruce McMullen
City Attorney/Chief Legal Officer

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CERTIFICATE OF SERVICE



Zayid A. Saleem

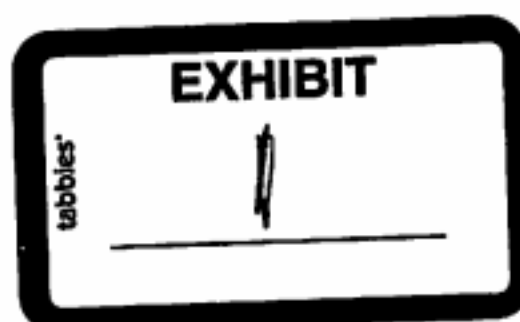
A handwritten signature in blue ink, consisting of a large, stylized 'Z' followed by a vertical stroke, positioned over the signature line.

Div 8 - Divorce

(A) Serve the recipient of the subpoena by facsimile with a written objection to the subpoena, with a copy of the notice by facsimile to the party that served the subpoena, and

(B) Simultaneously file and serve a motion for a protective order consistent with the requirements of T.R.C.P. 26.03 and 26.07.

If no objection is made within seven (7) days of the above date, you shall process this subpoena and produce the documents by the date and time specified in the subpoena. The signature of counsel or party on the subpoena is certification that the above notice was provided to the patient.



Attorney or Party Signature for HIPAA notice

RETURN OF SERVICE OF SUBPOENA

I HEREBY CERTIFY THAT I HAVE SERVED THE WITHIN SUBPOENA:

By delivering on the _____ day of _____, 20____ at _____ M. a copy of the
subpoena to the following Witness _____
at _____

Signature of person accepting service _____ By: _____
Sheriff or other authorized person to serve process

RETURN OF NON-SERVICE OF SUBPOENA

I HEREBY CERTIFY THAT I HAVE NOT SERVED THE WITHIN SUBPOENA:

To the named Witness _____

because _____ is (are) not to be found in this County after diligent search and inquiry for the following
reason(s): _____

This _____ day of _____, 20____

By: _____
Sheriff or other authorized person to serve process

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SUBPOENA

Pamela Stark
Plaintiff

VS

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